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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

JAN 5 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re)
)
Amendment of Section 73.202(b),) MM Docket No. 94-126
Table of Allotments,) RM-8531
FM Broadcast Stations)
(Willows, California))

TO: Chief, Policy and Rules Division
Mass Media Bureau

**COMMENTS IN OPPOSITION TO
NOTICE OF PROPOSED RULEMAKING**

Royce International Broadcasting Company, licensee of FM Broadcast Station KWOD, Sacramento, California (Royce or KWOD), by its attorney, hereby respectfully submits the following Comments in Opposition to the **Notice of Proposed Rulemaking** in the above-captioned proceeding, DA 94-1217, released November 14, 1994, proposing the allocation of FM Channel 292A at Willows, California. As is demonstrated below, the allocation of Channel 292A to Willows is contrary to established Commission precedent and would allow for a station which would cause destructive electrical interference to existing station KWOD. In support whereof, the following is shown:

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Preliminary Statement

1. Station KWOD is a licensed FM facility on Channel 292B. It is authorized to operate with effective radiated power of 50 kilowatts and antenna height above average terrain of 125 meters, with radiation center 299 meters above mean sea level. KWOD's transmitter site is located 0.4 mile south of U. S. Highway 50 just west of the Sacramento/Eldorado county line, coordinates 38° 38' 30" N. Lat., 121° 05' 25" W. Long.

2. KIQS, Inc., licensee of Standard Broadcast Station KIQS, Willows, California (KIQS), seeks the allocation of Channel 292A to Willows. Because of existing FM stations KDIG(FM), Channel 294B, Orland, California and KARZ(FM), Channel 291C, Burney, California, any use of Channel 292A would have to be from a transmitter site at least 14.1 kilometers southeast of Willows. KIQS has indicated a hypothetical transmitter site at coordinates 39° 25' 56" N. Lat., 122° 49' 38" W. Long. (the "reference coordinates").

3. The reference coordinates are located 122.695 kilometers from KWOD; the azimuth bearing from the reference

coordinates to KWOD is 135.67° (the reverse bearing is 315.67°).

City-Grade Coverage Deficiency

4. KIQS' proposal for the allocation of Channel 292A is *prima facie* contrary to law because, by its own admission, the site restriction for Channel 292A will not permit 70 dBu (city-grade) or better coverage to all areas within the corporation limits of Willows. There is attached hereto as Exhibit A those exhibit pages from KIQS' "Petition for Rulemaking" which demonstrate that an FM station located at the reference coordinates will provide city-grade service to only 91.3 percent of the community of Willows.

5. Upon these facts, the law is clear: the Commission will not allocate an FM channel to a community where no site is demonstrated which will permit city-grade coverage to 100% of the community of license. ***FM Table of Assignments, Greenwood, Seneca, Aiken and Clemson, South Carolina and Biltmore Forest, North Carolina***, 2 FCC Rcd 3583, 63 RR 2d 251 (Bureau, 1987), *rev. den.* 3 FCC Rcd 4108 (1988).

6. The **Greenwood** precedent has been consistently applied by the Commission. See e.g. **FM Table of Assignments, Mandeville, Louisiana**, 3 FCC Rcd 6517 (¶13) (Bureau, 1988); **FM Table of Assignments, Stuart and Boone, Iowa**, 6 FCC Rcd 6036 (¶5) (Bureau, 1991); **FM Table of Assignments, Wellington, Wichita and Andover, Kansas**, 7 FCC Rcd 2195 (¶6) (Bureau, 1992); **FM Table of Assignments, Elizabeth City, North Carolina**, 9 FCC Rcd 3586, n. 3 (Bureau, 1994); **FM Table of Assignments, Alfred, Campbell and Waverly, New York**, 8 FCC Rcd 8662 (¶13) (Bureau, 1994); and **FM Table of Assignments, Virginia City, Nevada**, 7 FCC Rcd 1319 (¶8) (Bureau, 1992).

7. In **Virginia City**, *supra*, the Bureau wrote the following:

As Hillcrest is aware, Commission practice is generally to deny allotment requests where the principal city coverage requirements of Section 73.315(a) cannot be met. See **Greenwood, South Carolina**, et al, 2 FCC Rcd 3583 (1987), *app. for rev. denied*, 3 FCC Rcd 4108 (1988), and cases cited therein. We find that Hillcrest has not provided a sufficiently compelling reason why we should depart from this policy. While it may be true that Channel 272C3 could be the last channel available for allotment to Virginia City, that no other channel could be allotted which would not suffer from the same infirmities, and Virginia City, as a county seat and tourist mecca, deserves its first local FM service, we find these

arguments to be unpersuasive. The provision of a first local FM service is a desirable goal and a high priority in the allotment of channels. However, it is not of sufficient weight to warrant the allotment of a substandard channel. As recently stated in **Sonora, California** "... the Commission has an overriding concern with establishing FM allotments on which technically viable stations can operate. Accordingly, we require strict adherence to our technical rules at the allotment stage." See 6 FCC Rcd 6042 (1991), *recon. pend.*

8. In its decision in **Greenwood, South Carolina**, *supra*, the Commission stated the rationale for the foregoing policy:

It would be counterproductive to allot a channel whose utilization could not result in a signal of adequate quality. Resources would generally be wasted in rule making proceedings to allot channels which from the outset could not conform to Commission rules, such as that set forth in Section 73.315(a). Since Tri-County's proposal does not conform to the threshold principal city coverage requirement, it is not appropriate to compare Biltmore Forest and Clemson pursuant to Section 307(b).

The Commission does, of course, consider waivers of its city grade coverage requirement. For good reason, however, consideration is generally limited to the application context. It is generally only at that stage that the Commission has before it the information necessary to make informed judgments. The Commission generally cannot, in the course of rule making proceedings, evaluate the actual transmitter sites that will be specified in applications not yet filed. A party requesting waiver at the allotment

stage may not turn out to be the successful applicant, and its site may, therefore, not be the one ultimately utilized. In contrast, at the application stage, all applicants and their proposed sites are on record, and the Commission can evaluate compliance with its rules. In the instant situation, the closest site theoretically available to serve Clemson would allow for only 87 percent city grade coverage. However, at the application stage it could be discovered that no proposed sites are close enough to Clemson to provide substantial coverage of the community. Consideration of Tri-County's waiver request at the allotment stage would, thus, be premature.

9. For the foregoing reasons KIQS's petition for the allocation of Channel 292A to Willows is contrary to established precedent. It was error for the Commission to have issued the **NPRM** in this case. Therefore, the Commission has no choice but to reject the proposed allocation of Channel 292A at Willows.

Interference to KWOD

10. Not only would the proposed station on Channel 292A provide substandard service to Willows, but it would also cause harmful electrical interference to areas within KWOD's normally protected F(50,50) 54 dBu contour.¹

¹Pursuant to 47 C.F.R. §73.215(a)(1), a Class B's normally protected contour is 54 dBu calculated through use of the Commission's F(50,50) curves. Pursuant to 47 C.F.R. §73.315(a)(2), the interfering contour of a first adjacent channel station is the F(50,10) contour which is 6 dB lower

11. For purposes of this analysis, the undersigned has obtained a computer study of a hypothetical Class A FM station's F(50,10) 48 dBu contour, assuming maximum facilities from the Willows reference coordinates. That study shows that the Willows F(50,10) 48 dbu contour, along the 135° radial toward KWOD, extends 60.72 kilometers. Along the 315° radial toward the Willows reference coordinates, the KWOD 54 dBu contour extends 69.96 kilometers.

12. As the distance between the Willows reference coordinates and KWOD's transmitter site is 122.695 kilometers, it is readily observed that the Willows 48 dBu interfering contour overlaps KWOD's normally protected contour by 7.985 kilometers (roughly 5 miles).²

13. There is attached hereto as Exhibit B a computer generated map showing the Willows F(50,10) 48 dBu contour, the KWOD F(50,50) 54 dBu contour, and the overlap area.

than the normally protected contour. Thus, we have studied the F(50,10) contour of the hypothetical Willows station at its reference coordinates.

²(60.72 km + 69.96 km = 130.68 km; 130.680 km - 122.695 km = 7.985 km).

This area includes much of central Sutter and western Yuba counties in California.

14. Because the Willows station on Channel 292A would cause interference to areas within KWOD's normally protected 54 dBu contour, KWOD hereby asserts its rights under Section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §316(a)(1). That statute provides as follows:

Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice.

15. A grant of broadcast facilities to one applicant which results in objectionable interference to an existing station within said station's "lawfully protected contour" raises a legally cognizable claim under Section 316 of the Communications Act. ***Western Broadcasting Co. v. FCC***, 674

F.2d 44, 51 RR 2d 111, 119 (D. C. Cir. 1981) and cases cited therein.

16. Therefore, it is Royce's position that KWOD's license will be modified should the Commission allocate Channel 292A at Willows. Royce objects to such a modification and in advance demands its hearing rights under Section 316 should the Commission proceed to allocate Channel 292A at Willows.

Other Matters

17. Willows currently has an FM channel, channel 288A; it is occupied by station KQSC(FM), licensed to Pacific Spanish Network, Inc. While in MM Docket No. 94-29 the licensee of KQSC(FM) is seeking to reallocate channel 288 to Dunnigan, California, it should not be presumed that this reallocation is a "done deal". There was significant opposition to the Dunnigan reallocation, and the opponents of Dunnigan clearly have the law on their side. Thus, should the allocation of Channel 292A to Willows not take place, Willows in all likelihood will continue to have local FM transmission service from station KQSC(FM) on Channel 288.

Conclusion

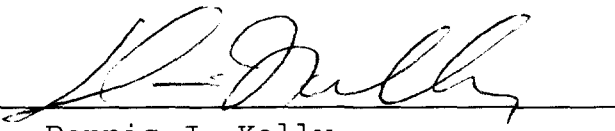
18. The proposed allocation of Channel 292A at Willows is bad all around. First, the allocation would not permit a fully-spaced site which would provide city-grade service to 100% of Willows, as is etched in stone in the Commission's policies and case precedents. Furthermore, the allocation of this inferior allocation to Willows will cause interference to station KWOD within its normally protected 54 dBu contour, thereby triggering KWOD's Section 316 hearing rights. Since Willows is already served by Channel 288, there is no need for the additional Channel 292A allocation, which is contrary to law and which fails to serve the public interest, convenience and necessity.

WHEREFORE, it is urged that the allocation of FM Channel 292A to Willows, California **BE DENIED.**

Respectfully submitted,

**ROYCE INTERNATIONAL BROADCASTING
COMPANY**

CORDON AND KELLY
Post Office Box 6648
Annapolis, MD 21401
Telephone: 410-280-6290

By 
Dennis J. Kelly
(D. C. Bar #292631)
Its Attorney

January 5, 1995

EXHIBIT A

Lambert Azimuthal Equal-Area

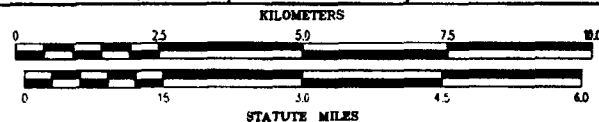
5' 00" Graticule Spacing

CENTER OF MAP:

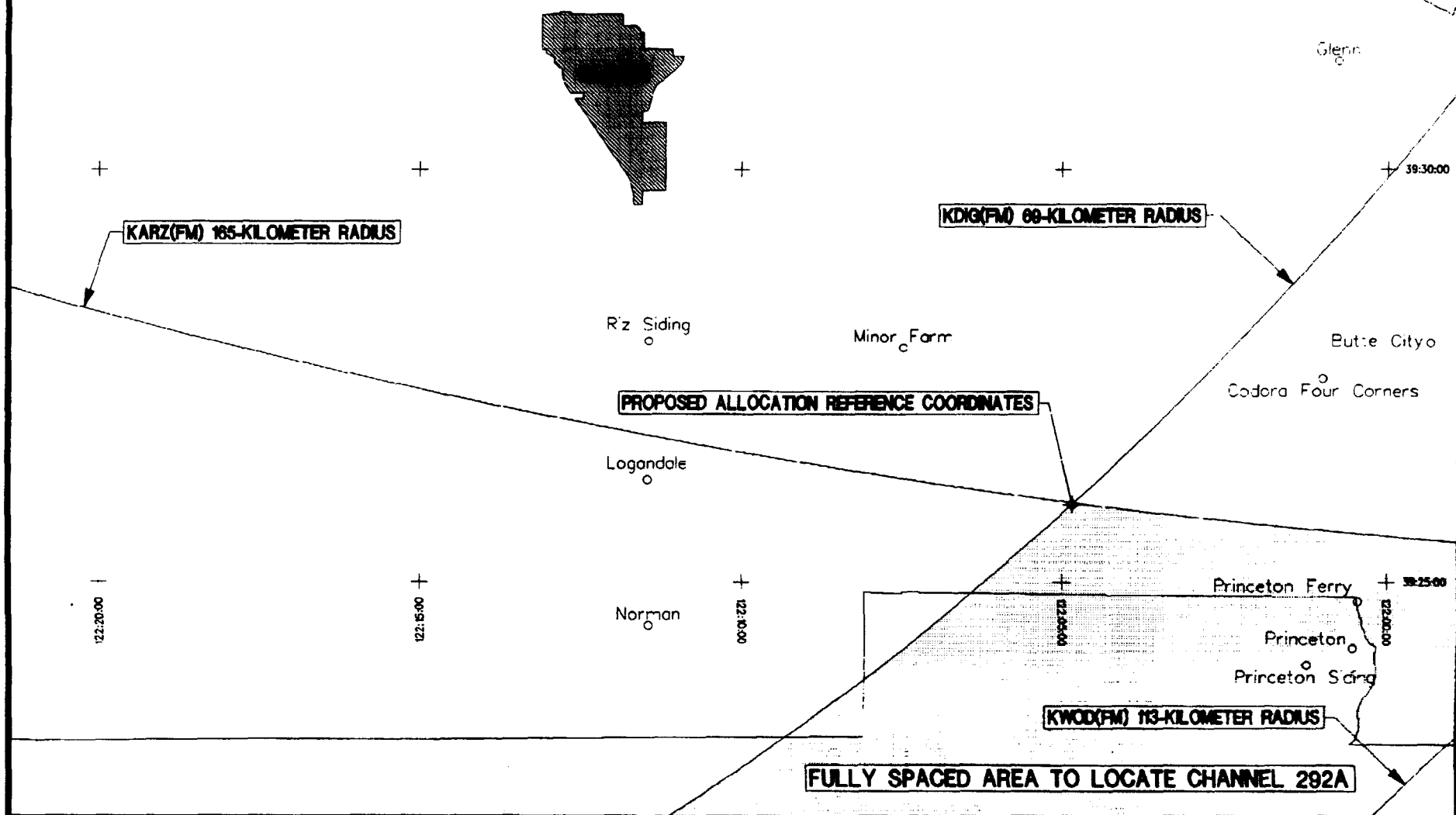
N LAT 39 28' 45.00"
W LON 122 10' 09.00"

Scale 1 : 126,720

EXHIBIT E-2
FULLY SPACED AREA TO LOCATE
CHANNEL 292A
WILLOWS, CALIFORNIA



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Mesa Oaks, California



Lambert Azimuthal Equal-Area

2' 30" Graticule Spacing

CENTER OF MAP:

N LAT 39 28' 51.00"
W LON 122 07' 58.00"

Scale 1 : 90,707

EXHIBIT E-5

70 DBU CITY GRADE CONTOUR
OVER WILLOWS CITY LIMITS
FROM FULLY SPACED CLASS A
FACILITY AT ALLOTMENT SITE



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Mesa Oaks, California

Glenn

91.3 PERCENT OF CITY RECEIVES 70 DBU OR GREATER SERVICE

CITY GRADE 70 DBU F(50,50) CONTOUR

Riz Siding

Mirror Farm

Codora
Codora Four Corners

Logandale

ALLOTMENT REFERENCE SITE

39:25:00 +
122:15:00

122:12:30

Norman

122:09:22

122:07:30

122:05:00

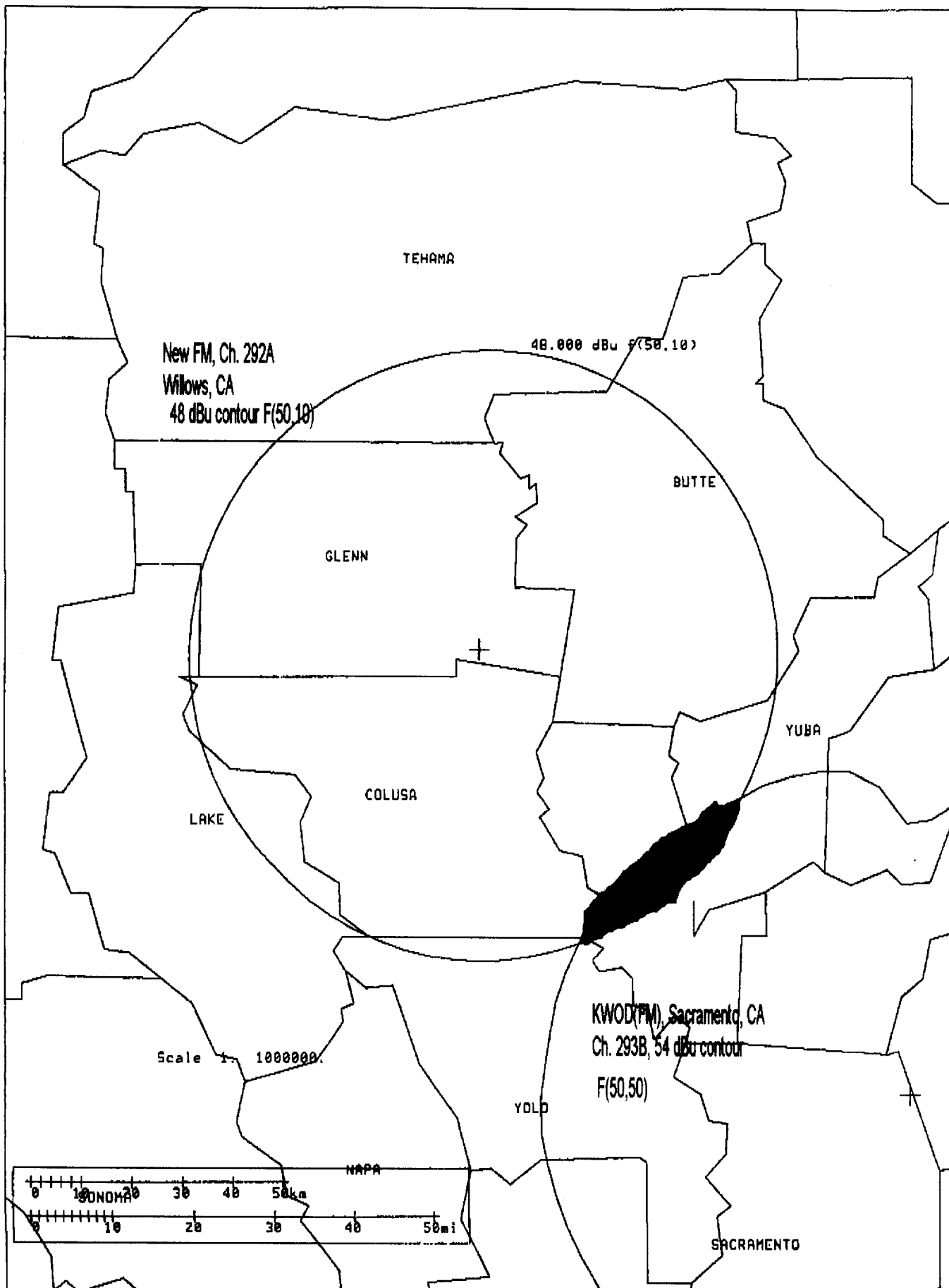
122:02:30

Princeton Ferry

Princeton

122:00:00

EXHIBIT B



COMPUTED DISTANCE TO CONTOURS (PART 73)

KWOD

Sacramento; Licensed TX Site

Transmitter Latitude: 38:38:30.0N Longitude: 121:05:25.0W

Transmitter center of radiation: 299.0 m AMSL (56.70 m AGL)

Power: 17.000 dBk Channel 293

Contour values written to file PLT0011.FM for plotting.

Azimuth (Deg T)	HAAT (m)	Horizontal Relative Field	Equiv Power	Rough Correct	f(50,50) 54.0 dBu (km)	f(50,50) 34.0 dBu (km)
220.00	219.94	1.000	17.000	.000	72.40	126.17
225.00	219.96	1.000	17.000	.000	72.40	126.17
230.00	220.27	1.000	17.000	.000	72.43	126.21
235.00	221.98	1.000	17.000	.000	72.59	126.39
240.00	224.34	1.000	17.000	.000	72.80	126.66
245.00	226.43	1.000	17.000	.000	72.99	126.88
250.00	228.39	1.000	17.000	.000	73.17	127.10
255.00	230.46	1.000	17.000	.000	73.35	127.32
260.00	234.39	1.000	17.000	.000	73.70	127.75
265.00	238.20	1.000	17.000	.000	74.03	128.15
270.00	236.64	1.000	17.000	.000	73.89	127.99
275.00	229.01	1.000	17.000	.000	73.22	127.16
280.00	225.96	1.000	17.000	.000	72.95	126.83
285.00	227.56	1.000	17.000	.000	73.09	127.01
290.00	224.28	1.000	17.000	.000	72.80	126.65
295.00	220.89	1.000	17.000	.000	72.49	126.27
300.00	219.77	1.000	17.000	.000	72.39	126.15
305.00	213.75	1.000	17.000	.000	71.83	125.48
310.00	202.25	1.000	17.000	.000	70.75	124.18
315.00	194.05	1.000	17.000	.000	69.96	123.23
320.00	182.67	1.000	17.000	.000	68.86	121.88
325.00	168.03	1.000	17.000	.000	67.32	120.08
330.00	165.95	1.000	17.000	.000	67.08	119.81
335.00	166.05	1.000	17.000	.000	67.09	119.82

COMPUTED DISTANCE TO CONTOURS (PART 73)

292A Willows

Willows; Proposed TX

Transmitter Latitude: 39:25:56.0N Longitude: 122:04:50.0W

Transmitter center of radiation: 125.6 m AMSL (92.59 m AGL)

Power: 7.780 dBk Channel 292

Contour values written to file PLT0010.FM for plotting.

Azimuth (Deg T)	HAAT (m)	Horizontal Relative Field	Equiv Power	Rough Correct	f(50,10) 48.0 dBu (km)
120.00	104.94	1.000	7.780	.000	60.51
125.00	105.46	1.000	7.780	.000	60.60
130.00	105.85	1.000	7.780	.000	60.67
135.00	106.12	1.000	7.780	.000	60.72
140.00	106.27	1.000	7.780	.000	60.75
145.00	106.36	1.000	7.780	.000	60.76
150.00	106.33	1.000	7.780	.000	60.76
155.00	106.52	1.000	7.780	.000	60.79
160.00	106.82	1.000	7.780	.000	60.84
165.00	106.85	1.000	7.780	.000	60.85
170.00	106.86	1.000	7.780	.000	60.85
175.00	107.12	1.000	7.780	.000	60.89
180.00	107.49	1.000	7.780	.000	60.96
185.00	107.17	1.000	7.780	.000	60.90
190.00	106.71	1.000	7.780	.000	60.82
195.00	106.19	1.000	7.780	.000	60.73
200.00	105.31	1.000	7.780	.000	60.57
205.00	104.58	1.000	7.780	.000	60.44
210.00	103.77	1.000	7.780	.000	60.30
215.00	103.03	1.000	7.780	.000	60.16
220.00	101.53	1.000	7.780	.000	59.89
225.00	100.71	1.000	7.780	.000	59.74
230.00	100.57	1.000	7.780	.000	59.72
235.00	100.27	1.000	7.780	.000	59.66

DISTANCE AND BEARING CALCULATIONS

The method used for these calculation is FCC Part 73.208

PRIMARY SITE: Licensed TX Site
38:38:30.0N
121:05:25.0W

TARGET SITE	LATITUDE	LONGITUDE	DISTANCE (km)	BEARING	REVERSE BEARING
	39:25:56.0N	122:04:50.0W	122.695	315.67	135.67

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Comments in Opposition to Notice of Proposed Rulemaking" were served by first-class United States mail, postage prepaid, on this 5th day of January, 1995, upon the following:

KIQS, Inc.
Attn: Anthony F. Rusnak, President
118 W. Sycamore Street
Willows, CA 95988


Dennis J. Kelly